

C.R.S. 18-18-406.3

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 18. CRIMINAL CODE  
ARTICLE 18. UNIFORM CONTROLLED SUBSTANCES ACT OF 1992  
PART 4. OFFENSES AND PENALTIES

C.R.S. 18-18-406.3 (2013)

18-18-406.3. Medical use of marijuana by persons diagnosed with debilitating medical conditions - unlawful acts - penalty - medical marijuana program cash fund

(1) The general assembly hereby finds and declares that:

(a) Section 14 of article XVIII of the state constitution was approved by the registered electors of this state at the 2000 general election;

(b) Section 14 of article XVIII of the state constitution creates limited exceptions to the criminal laws of this state for patients, primary care givers, and physicians concerning the medical use of marijuana by a patient to alleviate an appropriately diagnosed debilitating medical condition;

(c) Section 14 of article XVIII of the state constitution requires a state health agency designated by the governor to establish and maintain a confidential registry of patients authorized to engage in the medical use of marijuana;

(d) The governor, in accordance with paragraph (h) of subsection (1) of section 14 of article XVIII of the state constitution, has designated the department of public health and environment, referred to in this section as the department, to be the state health agency responsible for the administration of the medical marijuana program;

(e) Section 14 of article XVIII of the state constitution requires the department to process the applications of patients who wish to qualify for and be placed on the confidential registry for the medical use of marijuana, and to issue registry identification cards to patients who qualify for placement on the registry;

(f) Section 14 of article XVIII of the state constitution sets forth the lawful limits on the medical use of marijuana;

(g) Section 14 of article XVIII of the state constitution requires the general assembly to determine and enact criminal penalties for specific acts described in the constitutional provision;

(h) In interpreting the provisions of section 14 of article XVIII of the state constitution, the general assembly has applied the definitions contained in subsection (1) of the constitutional provision and has attempted to give the remaining words of the constitutional provision their plain meaning;

(i) This section reflects the considered judgment of the general assembly regarding the meaning and implementation of the provisions of section 14 of article XVIII of the state constitution.

(2) (a) Any person who fraudulently represents a medical condition to a physician, the department, or a state or local law enforcement official for the purpose of falsely obtaining a marijuana registry identification card from the department, or for the purpose of avoiding arrest and prosecution for a marijuana-related offense, commits a class 1 misdemeanor.

(b) If an officer or employee of the department receives information that causes such officer or employee reasonably to believe that fraudulent representation, as described in paragraph (a) of this subsection (2), has occurred, such officer or employee shall report the information to either the district attorney of the county in which the applicant for the marijuana registry identification card resides, or to the attorney general.

(3) The fraudulent use or theft of any person's marijuana registry identification card, including, but not limited to, any card that is required to be returned to the department pursuant to section 14 of article XVIII of the state constitution, is a class 1 misdemeanor.

(4) The fraudulent production or counterfeiting of, or tampering with, one or more marijuana registry identification cards is a class 1 misdemeanor.

(5) Any person including, but not limited to, any officer, employee, or agent of the department, or any officer, employee, or agent of any state or local law enforcement agency, who releases or makes public any confidential record or any confidential information contained in any such record that is provided to or by the marijuana registry of the department without the written authorization of the marijuana registry patient commits a class 1 misdemeanor.

(6) The use, possession, manufacturing, dispensing, selling, or distribution of a synthetic cannabinoid, as defined in section 18-18-102 (34.5), shall not be considered an exception to the criminal laws of this state for the purposes of this section or of section 14 of article XVIII of the state constitution.

(7) An owner, officer, or employee of a business licensed pursuant to article 43.3 of title 12, C.R.S., or an employee of the state medical marijuana licensing authority, a local medical marijuana licensing authority, or the department of public health and environment, who releases or makes public a patient's medical record or any confidential information contained in any such record that is provided to or by the business licensed pursuant to article 43.3 of title 12, C.R.S., without the written authorization of the patient commits a class 1 misdemeanor; except that the owner, officer, or employee shall release the records or information upon request by the state or local medical marijuana licensing authority. The records or information produced for review by the state or local licensing authority shall not become public records by virtue of the disclosure and may be used only for a purpose authorized by article 43.3 of title 12, C.R.S., or for another state or local law enforcement purpose. The records or information shall constitute medical data as defined by section 24-72-204 (3) (a) (I), C.R.S. The state or local medical marijuana licensing authority may disclose any records or information so obtained only to those persons directly involved with any investigation or proceeding authorized by article 43.3 of title 12, C.R.S., or for any state or local law enforcement purpose.

HISTORY: Source: L. 2001: Entire section added, p. 471, § 1, effective April 27. L. 2011: (6) added, (SB 11-134), ch. 261, p. 1140, § 3, effective July 1; (7) added, (HB 11-1043), ch. 266, p. 1215, § 28, effective July 1.

Editor's note: Subsection (7) was numbered as subsection (6) in House Bill 11-1043 but was renumbered on revision for ease of location.

## ANNOTATION

Primary care-giver must do more than merely supply a patient with marijuana for medical use in order to meet the constitutional requirement of having a significant responsibility for managing the well-being of a patient who has a debilitating medical condition. *People v. Clendenin*, 232 P.3d 210 (Colo. App. 2009).

Primary care-giver affirmative defense does not apply where the provision of marijuana is itself the substance of the relationship. *People v. Clendenin*, 232 P.3d 210 (Colo. App. 2009).

Written waiver requirement of subsection (5) of this section is inapplicable where defendant raised affirmative defense of medical use. Physician's rebuttal testimony concerning his conversations with defendant was a lawful disclosure under § 13-90-107 (1)(d) rather than an unlawful disclosure of defendant's confidential medical marijuana patient registry information. *People v. Sexton*, 2012 COA 26, 269 P.3d 157.

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